

1 BYRON CHAPMAN,

NO. CIV. S-04-1339 LKK CMK

2 Plaintiff,

3 v.

4 PIER 1 IMPORTS, et al.,

5 Defendants.

6 /

7 The court has received defendants' motion to clarify in
8 Wilson v. Pier 1 Imports, No. Civ. S-04-633. In light of that
9 motion and issues which have arisen in Eiden v. Home Depot, No.
10 Civ. S-04-977, and Chapman v. Pier 1 Imports, No. Civ. S-04-1399,
11 the court ORDERS the parties to submit supplemental briefing no
12 longer than ten (10) pages, and no later than 10:00 a.m. on May 12,
13 2006, on the issue posed below.

14 Under the state disability statutes, liability attaches if (1)
15 plaintiff can show that either the ADA was violated, or (2)
16 that the facility in question does not comply with the California
17 Building Code (CBC) requirements, which are often referred to as
18 "Title 24," and that defendant committed intentional
19 discrimination.¹ See Pickern v. Best Western Timber Cove Lodge

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21 ¹ Until it was amended in 1992, the only way to prove that
22 defendant violated the Unruh Act was to show that the facility was
23 in violation of Title 24 and that the discrimination plaintiff
24 experienced was intentional. See Harris v. Capital Growth
25 Investors XIV, 52 Cal.3d 1142, 1175 (1991) ("[W]e hold that a
plaintiff seeking to establish a case under the Unruh Act must
plead and prove intentional discrimination in public accommodations
in violation of the terms of the Act"). After the Unruh Act was
amended in 1992 to incorporate the ADA, plaintiff was not required

1 Marina Resort, 194 F.Supp.2d 1128, 1131 n. 4 (E.D. Cal. 2002)
2 (Shubb, J.). The court, however, has been unable to locate
3 authority on the question of whether under federal law a plaintiff
4 can show that a violation of the CBC would also constitute a
5 violation of the ADA. The parties are ordered to brief this issue
6 as directed above.

7 IT IS SO ORDERED.

8 DATED: May 8, 2006.

/s/Lawrence K. Karlton

LAWRENCE K. KARLTON

SENIOR JUDGE

UNITED STATES DISTRICT COURT

22 to prove intentional discrimination to establish that his or her
23 rights were violated under the Unruh Act if the Unruh claim is
24 premised on an ADA violation. Lentini v. California Center for the
25 Arts, 970 F.3d 837, 847 (9th Cir. 2004) (No showing of intentional
discrimination is required under the Unruh Act when the violation
is premised on an ADA violation.).